

# **EXHIBIT D**

**OPEN SOCIETY  
JUSTICE INITIATIVE**

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**June 24, 2020**

*Via email*

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

*Office of Global Affairs  
Office of the Assistant Secretary for Preparedness and Response  
Office of the Surgeon General  
Public Health Service*

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**Re: Freedom of Information Act Request  
Expedited Processing and Fee Waiver Requested**

To whom it may concern:

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, submitted on behalf of the Open Society Justice Initiative (“Justice Initiative”), an operational program of the Open Society Institute (“OSI”), a New York State charitable trust and nonprofit organization. We request records concerning the timing and substance of the Executive Branch’s response to the novel coronavirus, now known as severe acute respiratory syndrome coronavirus 2 or “SARS-CoV-2,” the virus that causes the disease known as coronavirus disease 2019 or “COVID-19.” This request is submitted to the Department of Health and Human Services (“HHS”), including the Office of Global Affairs, Office of the Assistant Secretary for Preparedness and Response (ASPR), the Public Health Service and the Office of the Surgeon General. We respectfully ask that this request be forwarded to any other component agency as appropriate.

Expedited processing is requested pursuant to 5 U.S.C. § 552(a)(6)(E), as is a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

**A. RECORDS REQUESTED**

The Justice Initiative requests disclosure of the following records<sup>1</sup> (including communications<sup>2</sup>) about what is now known as the novel coronavirus, SARS-CoV-2 or COVID-19 (“the virus”) created on or after December 1, 2019<sup>3</sup>:

1. Communications from December 1, 2019 until April 1, 2020, between Lawrence Kerr, Director of the Office of Pandemics and Emerging Threats and: a) officials in the National Security Council or b) World Health Organization (“WHO”) officials about the virus.
2. January 2020 communications between Stephen Hahn, (FDA Commissioner) and HHS’ immediate office of the Secretary (including the Secretary himself), about personal protective equipment and/or other supplies/equipment needed for the virus.<sup>4</sup>
3. Communications (from December 1, 2019 until June 1, 2020) between senior HHS officials<sup>5</sup> and White House officials (including President Trump) about the virus including, but not limited to, personal protective equipment (“PPE”) and other medical equipment/supplies (e.g. ventilators, test kits), testing, social distancing/reopening, tracing and treatment (including drugs and/or vaccines) for the virus.<sup>6</sup>
4. Records (from February 1, 2020 until June 23, 2020), referring to chloroquine phosphate and/or hydroxychloroquine sulfate for the virus, including but not limited to a) the request for, issuance of, and/or concerns about an Emergency Use Authorization (EUA) for these drugs to treat the virus; and/or b) the lifting of an “import alert” on an Indian pharmaceutical company, IPCA Laboratories Ltd, allowing it to supply these drugs to the US.<sup>7</sup>
5. Communications (from December 1, 2019 until June 1, 2020) between HHS Secretary Alex Azar and Assistant Secretary Robert Kadlec about the virus.
6. Communications (from December 1, 2019 until June 1, 2020) between the Assistant Secretary Robert Kadlec and a) the CDC Director or b) the NIH Director about the virus.
7. Communications (from December 1, 2019 until June 1, 2020) between the immediate office of ASPR

<sup>1</sup> For the purpose of this request, the term “records” includes, but is not limited to, any and all agendas; agreements; analyses; calendars; correspondence; data; databases; directives; documents; e-mails and e-mail attachments, including those sent through personal email accounts (e.g., Gmail); reports; rules; schedules; studies; tables of contents and contents of binders; talking points; technical specifications; training materials; examinations; faxes; files; guidance; guidelines; evaluations; instructions; letters; manifests; manuals; memoranda; notes; orders; prepared documentation for meetings, calls, teleconferences, or other discussions responsive to our request; policies; procedures; protocols; text messages and messages sent or received through other messaging applications (e.g., WhatsApp, iMessage, Telegram, Signal); voicemails; and any other materials. In the event that such records once existed but have now been destroyed, please disclose any records that are integrally related to, summarize, or are interchangeable with said records. Press clippings and news articles that are unaccompanied by any commentary need not be produced.

<sup>2</sup> For the purpose of this request, the term “communications” includes, but is not limited to, memoranda; calendar entries; correspondence; briefings; directives; e-mails and e-mail attachments, including sent through personal email accounts (e.g., Gmail); faxes; instructions; letters; text messages and messages sent or received through other messaging applications (e.g., WhatsApp, iMessage, Telegram, Signal); and voicemails. In the event that such communications once existed but are no longer available, please disclose any records that are integrally related to, summarize, or are interchangeable with said records.

<sup>3</sup> For categories where an end date is not specified, we expect that you will apply the date on which a genuine search for responsive records begins.

<sup>4</sup> Ryan Goodman and Danielle Schulkin, Timeline of the Coronavirus Pandemic and U.S. Response, May 7, 2020, <https://www.justsecurity.org/69650/timeline-of-the-coronavirus-pandemic-and-u-s-response/>.

<sup>5</sup> Senior HHS officials include: Secretary, HHS; Chief of Staff to the Secretary, HHS; Deputy Secretary, HHS; Assistant Secretary for Health, Director, BARDA; Assistant Secretary for Preparedness and Response (ASPR); Deputy Assistant Secretary (ASPR); Senior Science Advisor, ASPR; Assistant Secretary for Financial Resources (ASFR); Deputy Assistant Secretary of Budget (ASFR). If more than one person occupied a particular office between December 1, 2019 – June 1, 2020, please provide records of all of the occupants. Please also include persons occupying the position in “Acting” capacity.

<sup>6</sup> Eric Lipton et al., *He Could Have Seen What Was Coming: Behind Trump’s Failure on the Virus*, N.Y. Times (Apr. 11, 2020), <https://www.nytimes.com/2020/04/11/us/politics/coronavirus-trump-response.html>.

<sup>7</sup> Charles Piller, *Former FDA leaders decry emergency authorization of malaria drugs for coronavirus*, Apr. 7, 2020, <https://www.sciencemag.org/news/2020/04/former-fda-leaders-decry-emergency-authorization-malaria-drugs-coronavirus>; Ari Alstedter and Anna Edney, *Censured Indian Plant Gets USFDA Nod to Supply Trump-Touted Drug*, March 23, 2020, <https://www.bloomberg.com/news/articles/2020-03-23/fda-lifts-import-curbs-on-maker-of-unproven-virus-drug-in-india>

(including the Assistant Secretary Robert Kadlec) and FEMA's immediate office of the Administrator (including Administrator Peter Gaynor) about the virus.

8. Communications (from December 1, 2019 until June 1, 2020), between Laura Wolf (director, Division of Critical Infrastructure) and: a) Robert Kadlec; b) Rick Bright (former Director, BARDA), or c) White House officials, about the virus.
9. Communications (from December 1, 2019 until May 1, 2020) between Gretchen Michael (ASPR) and the head of communications at HHS about communicating with the public about the virus.
10. A February/March 2020 document titled "Four steps to mitigation," and records referring to this document.<sup>8</sup>
11. A February 2020 document titled "U.S. Government Response to the 2019 Novel Coronavirus" and records referring to this document.<sup>9</sup>
12. Communications from February 1, 2020 until May 1, 2020 between ASPR's immediate office (including Assistant Secretary Robert Kadlec) and a) the office of Florida Governor, Ron DeSantis (including Ron DeSantis) or b) the office of Florida Division of Emergency Management about allocations of supplies from the strategic national stockpile in response to the virus.
13. Records created on or after February 1, 2020 about the virus, referring to the biodefense company "Emergent Biosolutions."<sup>10</sup>
14. Records created on or after February 1, 2020 referring to Moncef Slaoui,<sup>11</sup> "Project Airbridge," Jared Kushner, or any person purporting to speak on his or his coronavirus team's behalf including, but not limited to, Rachael Baitel.<sup>12</sup>
15. Communications since February 1, 2020 about the virus between HHS' immediate office of the Secretary (including Alex Azar) and members/staff of the Job Creators Network (including, but not limited to, Alfredo Ortiz and its Elaine Parker<sup>13</sup> or b) officials/staff from the Marcus Foundation.<sup>14</sup>
16. Communications about the virus since April 15, 2020, between Michael Caputo (HHS assistant secretary for public affairs) and staff/members of the Job Creators Network,<sup>15</sup> including, but not limited to: a) Scott Verner (Travidia Health), b) Fred Eshelman (Eshelman Ventures LLC), or c) any other persons using a Travidia Health or Eshelman Ventures LLC email address.

## B. BACKGROUND

The earliest known case of COVID-19 (the disease caused by what is now known as SARS-CoV-2) reportedly can be traced back to November 17, 2019, in Hubei province, China.<sup>16</sup> By December 31, 2019, health officials in Wuhan posted a notice that they were investigating an outbreak of pneumonia in the city, and the World

<sup>8</sup> Eric Lipton et al., *He Could Have Seen What Was Coming: Behind Trump's Failure on the Virus*, N.Y. Times (Apr. 11, 2020), <https://www.nytimes.com/2020/04/11/us/politics/coronavirus-trump-response.html>.

<sup>9</sup> *Id.*

<sup>10</sup> Emily Kopp, *Trump health official's approach to contracts faces scrutiny*, June 10, 2020, <https://www.rollcall.com/2020/06/10/trump-health-officials-approach-to-contracts-faces-scrutiny/>

<sup>11</sup> Sheila Kaplan et al, *Trump's Vaccine Chief Has Vast Ties to Drug Industry, Posing Possible Conflicts*, N.Y. Times, May 20, 2020, <https://www.nytimes.com/2020/05/20/health/coronavirus-vaccine-czar.html>.

<sup>12</sup> This includes any communications received from personal, non-governmental, or non-official email or phone accounts. Nicholas Confessore et al., *How Kushner's Volunteer Force Led a Fumbling Hunt for Medical Supplies*, NY Times (May 5, 2020), <https://www.nytimes.com/2020/05/05/us/jared-kushner-fema-coronavirus.html>; Yasmee Abutaleb et al., *Kushner coronavirus team sparks confusion, plaudits inside White House response efforts*, Wash. Post (Mar. 18, 2020), [https://www.washingtonpost.com/politics/kushner-coronavirus-team-sparks-confusion-plaudits-inside-white-house-response-efforts/2020/03/18/02038a16-6874-11ea-9923-57073adce27c\\_story.html](https://www.washingtonpost.com/politics/kushner-coronavirus-team-sparks-confusion-plaudits-inside-white-house-response-efforts/2020/03/18/02038a16-6874-11ea-9923-57073adce27c_story.html).

<sup>13</sup> It is possible that JCN staff used email addresses that included "@jobcreatorsnetwork.com."

<sup>14</sup> It is possible that Marcus Foundation staff used email addresses that included "@marcusfoundation.org."

<sup>15</sup> It is possible that JCN staff used email addresses that included "@jobcreatorsnetwork.com."

<sup>16</sup> Helen Davidson, *First Covid-19 case happened in November, China government records show*, The Guardian (Mar. 13, 2020), <https://www.theguardian.com/world/2020/mar/13/first-covid-19-case-happened-in-november-china-government-records-show-report>.

Health Organization (“WHO”) acknowledged that on that date it “was informed of a cluster of cases of pneumonia of unknown cause.”<sup>17</sup> As of January 3, 2020, Chinese authorities reported a total of 44 patients with pneumonia of unknown etiology to the WHO.<sup>18</sup>

Media reports provide varying accounts of when the U.S. Executive Branch first received notice of what is now known as SARS-CoV-2.<sup>19</sup> According to the *Washington Post*, on January 3, 2020, a Chinese official informed Robert Redfield, Director for the Centers for Disease Control and Prevention (“CDC”), of the outbreak of a respiratory illness in the city of Wuhan.<sup>20</sup> Redfield relayed the report to Alex Azar, Secretary for Health and Human Services (“HHS”), who reportedly relayed it to the White House.<sup>21</sup>

Although the Executive Branch has publicly promised transparency, the White House reportedly ordered federal health officials to treat top-level coronavirus meetings as classified to keep meeting participation low and prevent leaks.<sup>22</sup> Classification prevented relevant officials from attending the meetings because they did not possess the requisite security clearances.<sup>23</sup>

On January 21, 2020, the CDC publicly confirmed the first U.S. novel coronavirus case, what is now known as SARS-CoV-2, in the state of Washington.<sup>24</sup> On January 29, 2020, the White House announced the formation of “a coronavirus task force,” while noting that “[t]he risk of infection for Americans remains low.”<sup>25</sup> On January 30, 2020, the WHO declared the outbreak a “Public Health Emergency of International Concern.”<sup>26</sup> Hours after that declaration, President Trump said during a speech on trade at a Michigan manufacturing plant, that the virus was “going to have a very good ending for us. So that I can assure you.”<sup>27</sup>

The WHO began supplying diagnostic test kits to various countries in January 2020, but the U.S. did not use that test, choosing instead to develop its own.<sup>28</sup> Contrary to an April 2018 agreement between the CDC and three of the biggest associations involved in lab testing, the Executive Branch reportedly prevented non-government laboratories from assisting in testing.<sup>29</sup> The CDC released a flawed test in February 2020 that took weeks to correct.<sup>30</sup>

<sup>17</sup> Wuhan Municipal Health Commission on the current situation of pneumonia in our city (*translated from Mandarin*), Dec. 31, 2020, available at <http://wjw.wuhan.gov.cn/front/web/showDetail/2019123108989>; World Health Organization, Coronavirus disease (COVID-2019) R&D, available at <https://www.who.int/blueprint/priority-diseases/key-action/novel-coronavirus/en/>.

<sup>18</sup> World Health Organization, *Pneumonia of unknown cause – China* (Jan. 5, 2020), <https://www.who.int/csr/don/05-january-2020-pneumonia-of-unknown-cause-china/en/>.

<sup>19</sup> Shane Harris et al., *U.S. intelligence reports from January and February warned about a likely pandemic*, Wash. Post (Mar. 20, 2020), Eric Lipton, et al., *He Could Have Seen What Was Coming: Behind Trump’s Failure on the Virus*, N.Y. Times (Apr. 11, 2020); Josh Margolin & James Gordon Meek, *Intelligence report warned of coronavirus crisis as early as November: Sources*, ABC News (Apr. 8, 2020).

<sup>20</sup> Yasmeen Abutaleb et al., *The U.S. was beset by denial and dysfunction as the coronavirus raged*, Wash. Post (Apr. 4, 2020), <https://www.washingtonpost.com/national-security/2020/04/04/coronavirus-government-dysfunction/>.

<sup>21</sup> *Id.*

<sup>22</sup> Aram Roston & Marisa Taylor, *Exclusive: White House told federal health agency to classify coronavirus deliberations – sources*, Reuters (Mar. 11, 2020), <https://www.reuters.com/article/us-health-coronavirus-secrecy-exclusive/exclusive-white-house-told-federal-health-agency-to-classify-coronavirus-deliberations-sources-idUSKBN20Y2LM>.

<sup>23</sup> *Id.*

<sup>24</sup> Press Release, *First Travel-related Case of 2019 Novel Coronavirus Detected in United States*, Centers for Disease Control and Prevention (Jan. 21, 2020), <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>.

<sup>25</sup> *Statement from the Press Secretary Regarding the President’s Coronavirus Task Force*, White House (Jan. 29, 2020), <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-presidents-coronavirus-task-force/>.

<sup>26</sup> *Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV)*, World Health Organization (Jan. 30, 2020), [https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov)).

<sup>27</sup> Caitlin Oprysko, *Trump: Coronavirus will have ‘a very good ending for us,’ Politico* (Jan. 30, 2020), <https://www.politico.com/news/2020/01/30/trump-close-cooperation-china-coronavirus-109701>.

<sup>28</sup> Donald McNeil, *Did Federal Officials Really Question W.H.O. Tests for Coronavirus?*, N.Y. Times (Mar. 17, 2020), <https://www.nytimes.com/2020/03/17/health/coronavirus-tests-who.html>.

<sup>29</sup> Bob Ortega et al., *How the government delayed coronavirus testing*, CNN (Apr. 9, 2020), <https://www.cnn.com/2020/04/09/politics/coronavirus-testing-cdc-fda-red-tape-invs/index.html>.

<sup>30</sup> *Id.*

The Executive Branch has responded disparately to state governors' requests for drugs, medical supplies and equipment, prompting questions about whether politics influenced their allocation across states.<sup>31</sup>

Since January 2020, President Trump has repeatedly downplayed the threat of the virus.<sup>32</sup> On January 22, President Trump said he publicly was not worried about a pandemic, stating, "We have it totally under control...It's one person coming in from China, and we have it under control. It's going to be just fine."<sup>33</sup> On January 24, President Trump tweeted that the "United States greatly appreciates [China's] efforts and transparency," and "it will all work out well."<sup>34</sup> On February 7, 2020, he tweeted that "as the weather starts to warm...the virus hopefully becomes weaker, and then gone."<sup>35</sup> On February 10, he stated at a New Hampshire rally, "looks like, by April, you know, in theory, when it gets a little warmer, it miraculously goes away."<sup>36</sup> On February 24, he tweeted that "[t]he Coronavirus is very much under control in the USA."<sup>37</sup> On March 7, President Trump publicly stated that "[a]nybody that needs a test, gets a test. They're there. They have the tests. And the tests are beautiful."<sup>38</sup>

In March 2020, Jared Kushner, President Trump's son-in-law and senior adviser, reportedly created his own team of government allies and private industry representatives to work alongside the official coronavirus task force.<sup>39</sup> Kushner's outside advisers were reportedly emailing large groups of government employees from private email addresses.<sup>40</sup> Kushner reportedly was also the White House "point person" for "Project Airbridge" which purports to work with private companies to bring medical supplies from other countries to the United States.<sup>41</sup>

On March 19, President Trump publicly suggested during his daily coronavirus briefing that the drugs Remdesivir, Chloroquine and Hydroxychloroquine were a possible "game changer" for treating COVID-19,<sup>42</sup> despite insufficient evidence of their efficacy.<sup>43</sup> A few days later, a man died and his wife was hospitalized

<sup>31</sup> Toluse Olorunnipa et al., *Governors plead for medical equipment from federal stockpile plagued by shortages and confusion*, Wash. Post (Mar. 21, 2020), [https://www.washingtonpost.com/politics/governors-plead-for-medical-equipment-from-federal-stockpile-plagued-by-shortages-and-confusion/2020/03/31/18aadda0-728d-11ea-87da-77a8136c1a6d\\_story.html](https://www.washingtonpost.com/politics/governors-plead-for-medical-equipment-from-federal-stockpile-plagued-by-shortages-and-confusion/2020/03/31/18aadda0-728d-11ea-87da-77a8136c1a6d_story.html).

<sup>32</sup> David Leonhardt, *A Complete List of Trump's Attempts to Play Down Coronavirus*, N.Y. Times (Mar. 15, 2020), <https://www.nytimes.com/2020/03/15/opinion/trump-coronavirus.html>; *18 times Trump said the coronavirus would go away*, Wash. Post, June 16, 2020, [https://www.washingtonpost.com/video/politics/18-times-trump-said-the-coronavirus-would-go-away/2020/04/30/d2593312-9593-4ec2-aff7-72c1438fca0e\\_video.html](https://www.washingtonpost.com/video/politics/18-times-trump-said-the-coronavirus-would-go-away/2020/04/30/d2593312-9593-4ec2-aff7-72c1438fca0e_video.html).

<sup>33</sup> Matthew J. Belvedere, *Trump says he trusts China's Xi on coronavirus and the US has it 'totally under control*, CNBC (Jan. 22, 2020), <https://www.cnbc.com/2020/01/22/trump-on-coronavirus-from-china-we-have-it-totally-under-control.html>.

<sup>34</sup> Donald J. Trump (@realDonaldTrump), Twitter (Jan. 24, 2020, 4:18 PM), <https://twitter.com/realdonaldtrump/status/1220818115354923009>.

<sup>35</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 7, 2020, 5:31 AM), <https://twitter.com/realdonaldtrump/status/1225728756456808448>.

<sup>36</sup> David Leonhardt, *A Complete List of Trump's Attempts to Play Down Coronavirus*, N.Y. Times (Mar. 15, 2020), <https://www.nytimes.com/2020/03/15/opinion/trump-coronavirus.html>.

<sup>37</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 24, 2020, 4:42 PM), <https://twitter.com/realdonaldtrump/status/1232058127740174339>.

<sup>38</sup> *Remarks by President Trump After Tour of the Centers for Disease Control and Prevention, Atlanta, GA*, White House (Mar. 7, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-tour-centers-disease-control-prevention-atlanta-ga/>.

<sup>39</sup> Yasmeen Abutaleb et al., *Kushner coronavirus team sparks confusion, plaudits inside White House response efforts*, Wash. Post (Mar. 18, 2020), [https://www.washingtonpost.com/politics/kushner-coronavirus-team-sparks-confusion-plaudits-inside-white-house-response-efforts/2020/03/18/02038a16-6874-11ea-9923-57073adce27c\\_story.html](https://www.washingtonpost.com/politics/kushner-coronavirus-team-sparks-confusion-plaudits-inside-white-house-response-efforts/2020/03/18/02038a16-6874-11ea-9923-57073adce27c_story.html).

<sup>40</sup> *Id.*

<sup>41</sup> Kathryn Watson, *What is Project Airbridge?*, CBS News (Mar. 30, 2020), <https://www.cbsnews.com/news/coronavirus-what-is-project-airbridge/>.

<sup>42</sup> *Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing*, White House (Mar. 19, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-6/>.

<sup>43</sup> Charles Ornstein, *What We Know — and Don't Know — About Possible Coronavirus Treatments Promoted by Trump*, Politico (Mar. 29, 2020), <https://www.propublica.org/article/what-we-know-and-dont-know-about-possible-coronavirus-treatments-promoted-by-trump>; see also Michael Crowley et al., *Ignoring Expert Opinion, Trump Again Promotes Use of Hydroxychloroquine*, N.Y. Times (Apr. 5, 2020), <https://www.nytimes.com/2020/04/05/us/politics/trump-hydroxychloroquine-coronavirus.html>; Peter Baker et al., *Trump's Aggressive Advocacy of Malaria Drug for Treating Coronavirus Divides Medical Community*, N.Y. Times (Apr. 6, 2020), <https://www.nytimes.com/2020/04/06/us/politics/coronavirus-trump-malaria-drug.html>.



after the couple ingested a form of Chloroquine.<sup>44</sup>

On April 3, 2020, President Trump reversed previous guidance on masks while announcing that people in the U.S. should wear face coverings in public to slow the spread of what is now known as SARS-CoV-2.<sup>45</sup> On April 14, contrary to his previous praise for China's "efforts and transparency,"<sup>46</sup> President Trump announced that he had instructed the Executive Branch to suspend funding to the WHO because it "willingly took China's assurances to face value" and "pushed China's misinformation."<sup>47</sup>

On April 16, 2020, after the White House released nonbinding guidelines recommending how and when states and localities should begin to reopen parts of the economy, President Trump stated that governors could reopen businesses by May 1 or earlier if they believed it prudent.<sup>48</sup> On April 22, 2020, Dr. Rick Bright, former director of HHS Biomedical Advanced Research and Development Authority and deputy assistant secretary for preparedness and response, said that he was dismissed from his positions and transferred to the National Institutes of Health after he pressed for rigorous vetting of Hydroxychloroquine, the drug embraced by President Trump for treating the virus.<sup>49</sup>

On April 23, 2020, President Trump suggested at a White House briefing that an "injection inside" the human body with a disinfectant could help combat COVID-19.<sup>50</sup> The same day, the Environmental Protection Agency issued a press release warning against ingesting disinfectants or applying them on the human body.<sup>51</sup> The day after the President suggested that a disinfectant injection could counter the virus, New York City's poison control center reported receiving a higher-than-normal number of calls, many of them relating to exposure to disinfectants.<sup>52</sup>

On June 20, 2020, President Trump hosted a rally in Tulsa, Oklahoma, despite concerns about rising numbers of coronavirus cases in the area and concerns about the event becoming a "super-spreader."<sup>53</sup> At the rally, President Trump referred to widespread testing as a "double-edged sword."<sup>54</sup> He added: "When you do testing to that extent, you're going to find more people, you're going to find more cases. So I said to my people, 'Slow the testing down, please.'"<sup>55</sup>

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<sup>44</sup> Scott Neuman, *Man Dies, Woman Hospitalized After Taking Form Of Chloroquine To Prevent COVID-19*, NPR (Mar. 24, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/03/24/820512107/man-dies-woman-hospitalized-after-taking-form-of-chloroquine-to-prevent-covid-19>.

<sup>45</sup> Lena Sun & Josh Dawsey, *New face mask guidance comes after battle between White House and CDC*, Wash. Post (Apr. 4, 2020), <https://www.washingtonpost.com/health/2020/04/03/white-house-cdc-turf-battle-over-guidance-broad-use-face-masks-fight-coronavirus/>.

<sup>46</sup> Donald J. Trump (@realDonaldTrump), Twitter (Jan. 24, 2020, 4:18 PM), <https://twitter.com/realdonaldtrump/status/1220818115354923009>.

<sup>47</sup> *Remarks by President Trump in Press Briefing*, White House (Apr. 14, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-press-briefing/>.

<sup>48</sup> Peter Baker & Michael D. Shear, *Trump Says States Can Start Reopening While Acknowledging the Decision Is Theirs*, N.Y. Times (Apr. 16, 2020), <https://www.nytimes.com/2020/04/16/us/politics/coronavirus-trump-guidelines.html>.

<sup>49</sup> *A doctor says he was removed from his federal post after pressing for rigorous vetting of treatments embraced by Trump*, N.Y. Times (Apr. 22, 2020), <https://www.nytimes.com/2020/04/22/us/coronavirus-live-coverage.html#link-652aa9c3>.

<sup>50</sup> *Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing*, White House (Apr. 23, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-31/>.

<sup>51</sup> *EPA provides critical information to the American public about safe disinfectant use* (Apr. 23, 2020), <https://www.epa.gov/newsreleases/epa-provides-critical-information-american-public-about-safe-disinfectant-use>.

<sup>52</sup> Jason Slotkin, *NYC Poison Control Sees Uptick In Calls After Trump's Disinfectant Comments*, NPR (Apr. 25, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/25/845015236/nyc-poison-control-sees-uptick-in-calls-after-trumps-disinfectant-comments>.

<sup>53</sup> Dareh Gregorian, *Trump supporters crowd Tulsa ahead of Saturday rally*, NBC News, (June 18, 2020), <https://www.nbcnews.com/politics/2020-election/trump-supporters-crowd-tulsa-ahead-saturday-rally-n1231454>

<sup>54</sup> *Trump Urges Slowdown in COVID-19 Testing, Calling It a 'Double-Edge Sword'*, N.Y. Times, (June 21, 2020), <https://www.nytimes.com/reuters/2020/06/21/us/21reuters-health-coronavirus-trump-testing.html?searchResultPosition=6>.

<sup>55</sup> *Id.*

### C. APPLICATION FOR EXPEDITED PROCESSING

The Justice Initiative requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E), as the information and records requested are urgently needed to inform the public about actual or alleged government activity, *see* 5 U.S.C. § 552(a)(6)(E)(v)(II), and as explained below, the Justice Initiative is an organization “primarily engaged in disseminating information...to inform the public concerning” that activity. 5 U.S.C. § 552(a)(6)(E)(v)(I-II). In addition, the Justice Initiative requests expedition on the grounds that failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. *See* 5 U.S.C. § 552(a)(6)(E)(v)(I).

The Executive Branch’s efforts to counter SARS-CoV-2 are literally a matter of life and death for the American public. The virus is quickly spreading, killing thousands of people in the United States.<sup>56</sup> Today, the U.S. has the highest number of COVID-19 cases in the world.<sup>57</sup> As of June 23, 2020, there were more than 2.3 million confirmed cases, and over 120,450 individuals had died from the virus in the United States.<sup>58</sup> The CDC has estimated that by July 11th, 2020, there will likely be between 129,000 and 145,000 total reported COVID-19 deaths in the U.S.<sup>59</sup>

The timing and substance of the Executive Branch’s response to the novel coronavirus, including what it knew or should have known about the virus and when, what measures it has taken and when to stem the spread, and how it is has engaged with the public, Congress, state governors, the WHO, scientists, and private companies the subject of ongoing and intense public debate.<sup>60</sup> Executive Branch officials have issued conflicting statements about the threat of the virus, the availability of testing, the duration of the risk of transmission, and the efficacy of masks and particular medications and treatment for the disease.<sup>61</sup> As such, there is significant uncertainty about how to interpret government statements and actions relevant for determining how individuals in the U.S. should protect themselves from the coronavirus.<sup>62</sup> Significantly, after President Trump publicly suggested that Chloroquine was a possible “game changer,” a man died and his wife was hospitalized after the couple ingested a form of the chemical.<sup>63</sup> The day after the President suggested that a disinfectant injection could counter the virus, New York City’s poison control center reported receiving a higher-than-normal number of calls, many of them relating to exposure to disinfectants.<sup>64</sup>

<sup>56</sup> *See e.g., Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

<sup>57</sup> COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE) at John Hopkins University, *U.S. Map*, <https://coronavirus.jhu.edu/map.html>.

<sup>58</sup> *Id.*

<sup>59</sup> Center for Disease Control and Prevention, *Interpretation of Cumulative Death Forecasts* (updated June 18, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/forecasting-us.html>.

<sup>60</sup> *See*, Section B, *supra*; *see also The Pandemic Is Still Raging. The President Pretends Otherwise*, N.Y. Times, June 23; Rick Noack, *In countries keeping the coronavirus at bay, experts watch U.S. case numbers with alarm*, Wash. Post, (June 19, 2020); Dylan Scott, *Trump baselessly claims Covid-19 testing is “overrated” and people wear masks to spite him* (June 18, 2020), <https://www.vox.com/2020/6/18/21295826/coronavirus-us-update-trump-wsj-interview-masks-tests>. For ongoing coverage by major media outlets updated in real-time, *see, e.g., Coronavirus*, Wash. Post, <https://www.washingtonpost.com/coronavirus/>; *The Coronavirus Outbreak*, N.Y. Times, <https://www.nytimes.com/news-event/coronavirus>; *Coronavirus*, Fox News, <https://www.foxnews.com/category/health/infectious-disease/coronavirus>; *Coronavirus*, NBC News, <https://www.nbcnews.com/health/coronavirus>; CNN.com, *Coronavirus pandemic: Updates from around the world*, <https://www.cnn.com/world/live-news/coronavirus-pandemic-06-19-20-intl/index.html>.

<sup>61</sup> *See* Section B, *supra*; *see also The Executive Branch keeps contradicting itself on coronavirus*, Wash. Post (Mar. 9, 2020), <https://www.youtube.com/watch?v=QiJ1tAdCsTo>; Jesse Naranjo & Rachel Roubein, *Trump vs. Pence: The administration contradicts itself on coronavirus*, Politico (Mar. 13, 2020), <https://www.politico.com/news/2020/03/13/trump-vs-pence-coronavirus-contradictions-127636>; Linda Qiu, Bill Marsh & Jon Huang, *The President vs. the Experts: How Trump Played Down the Coronavirus*, N.Y. Times (Mar. 18, 2020), <https://www.nytimes.com/interactive/2020/03/18/us/trump-coronavirus-statements-timeline.html>; Brad Brooks, *Like the flu? Trump’s coronavirus messaging confuses public, pandemic researchers say*, Reuters (Mar. 13, 2020), <https://www.reuters.com/article/us-health-coronavirus-mixed-messages/like-the-flu-trumps-coronavirus-messaging-confuses-public-pandemic-researchers-say-idUSKBN2102GY>.

<sup>62</sup> *See e.g., David Leonhardt, A Complete List of Trump’s Attempts to Play Down Coronavirus*, N.Y. Times (Mar. 15, 2020), <https://www.nytimes.com/2020/03/15/opinion/trump-coronavirus.html>.

<sup>63</sup> Scott Neuman, *Man Dies, Woman Hospitalized After Taking Form Of Chloroquine To Prevent COVID-19*, NPR (Mar. 24, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/03/24/820512107/man-dies-woman-hospitalized-after-taking-form-of-chloroquine-to-prevent-covid-19>.

<sup>64</sup> Jason Slotkin, *NYC Poison Control Sees Uptick In Calls After Trump’s Disinfectant Comments*, NPR (Apr. 25, 2020),



President Trump has repeatedly downplayed the threat of the virus.<sup>65</sup> He has claimed that “testing is overrated” and “makes us look bad,” and suggested that some Americans “wore facial coverings not as a preventative measure but as a way to signal disapproval of him.”<sup>66</sup> On June 20, 2020, he hosted a rally in Tulsa, Oklahoma, despite concerns about rising numbers of coronavirus cases in the area and concerns about the event becoming a “super-spreader.”<sup>67</sup> At the rally, President Trump referred to widespread testing as a “double-edged sword” and said that he had told “his people” to “slow the testing down.”<sup>68</sup>

In this context, failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of individuals in the United States. The information requested here is urgently needed for individuals in the United States to assess the government’s response to the virus and to make informed decisions about life and physical safety.

Furthermore, the Justice Initiative is “primarily engaged in disseminating information” within the meaning of the FOIA.<sup>69</sup> *Am. Civil Liberties Union v. Dep’t of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding that a non-profit, public interest group that “gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience” is “primarily engaged in disseminating information” within the meaning of the statute and regulations); *cf. Elec. Privacy Info. Ctr. v. U.S. Dep’t of Def.*, 241 F. Supp. 2d 5, 11-12 (D.D.C. 2003) (finding that the Electronic Privacy Information Center was a representative of the news media based on its publication of seven books about national and international policies relating to privacy and civil rights); *see also Nat’l Sec. Archive v. U.S. Dep’t of Def.*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (National Security Archive deemed a representative of the news media after publishing one book and indicating its intention to publish a set of documents on national and international politics and nuclear policy).

The Justice Initiative is an operating public interest law center dedicated to upholding human rights and the rule of law through litigation, advocacy, research, and technical assistance, with offices in New York, London, and Berlin. It is part of the Open Society Institute (“OSI”), a tax-exempt, non-partisan, not-for-profit organization, headquartered in New York City. OSI believes that solutions to national, regional, and global challenges require the free exchange of ideas and thought, and works to build vibrant and inclusive societies, grounded in respect for human rights and the rule of law, whose governments are accountable and open to the participation of all people. In support of their shared mission, OSI and the Justice Initiative share information with the public free of charge, through their websites, newsletters, and other publications to promote public understanding and robust debate. Disseminating information is among the Justice Initiative’s core activities. To accomplish its goals, the Justice Initiative maintains a website, [www.justiceinitiative.org](http://www.justiceinitiative.org), through which it disseminates reports, briefing papers, fact sheets and other publications relating to its mission (<https://www.justiceinitiative.org/publications>). It also directly distributes hard copies of publications and disseminates information via quarterly email newsletters, blogs ([www.opensocietyfoundations.org/voices](http://www.opensocietyfoundations.org/voices)), Twitter ([www.twitter.com/OSFJustice](http://www.twitter.com/OSFJustice)) and Facebook ([www.facebook.com/OpenSocietyFoundations](http://www.facebook.com/OpenSocietyFoundations)).

We affirm that information and statements concerning the need for expedited processing are true and correct to the best of our knowledge and belief.

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<https://www.npr.org/sections/coronavirus-live-updates/2020/04/25/845015236/nyc-poison-control-sees-uptick-in-calls-after-trumps-disinfectant-comments>.

<sup>65</sup> 18 times Trump said the coronavirus would go away, Wash. Post, June 16, 2020,

[https://www.washingtonpost.com/video/politics/18-times-trump-said-the-coronavirus-would-go-away/2020/04/30/d2593312-9593-4ec2-aff7-72c1438fca0e\\_video.html](https://www.washingtonpost.com/video/politics/18-times-trump-said-the-coronavirus-would-go-away/2020/04/30/d2593312-9593-4ec2-aff7-72c1438fca0e_video.html).

<sup>66</sup> Dylan Scott, *Trump baselessly claims Covid-19 testing is “overrated” and people wear masks to spite him* (June 18, 2020), <https://www.vox.com/2020/6/18/21295826/coronavirus-us-update-trump-wsj-interview-masks-tests>.

<sup>67</sup> Dareh Gregorian, *Trump supporters crowd Tulsa ahead of Saturday rally*, NBC News, (June 18, 2020), <https://www.nbcnews.com/politics/2020-election/trump-supporters-crowd-tulsa-ahead-saturday-rally-n1231454>

<sup>68</sup> *Trump Urges Slowdown in COVID-19 Testing, Calling It a 'Double-Edge Sword'*, N.Y. Times, (June 21, 2020), <https://www.nytimes.com/reuters/2020/06/21/us/21reuters-health-coronavirus-trump-testing.html?searchResultPosition=6>

<sup>69</sup> See 5 U.S.C. § 552(a)(6)(E)(v)(II).

**D. APPLICATION FOR FEE WAIVER**

We request a waiver of search, review and duplication fees on the grounds that disclosure of the requested information “is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii).

As set forth in Section C above, the information and records at issue will contribute significantly to the public understanding of the timing and content of the government’s response to COVID-19. Moreover, the Justice Initiative, a non-profit entity, does not seek disclosure of these records for commercial gain and intends to disseminate the information disclosed from this request to the public at no cost.

In addition, for the same reasons that render it “primarily engaged in disseminating information,” *see* Section C, *supra*, the Justice Initiative is also a “representative of the news media” within the meaning of the FOIA. As such, it is entitled to a fee waiver. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II). *See also Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (recognizing Congress’s intent that FOIA’s fee waiver provision is to be “liberally construed in favor of waivers for noncommercial requesters”).

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Pursuant to 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 5 U.S.C. § 552(a)(6)(A)(i), respectively, we look forward to your reply to the request for expedited processing within ten calendar days, and to the request for disclosure within twenty days.

We request that responsive records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency’s possession, and that the records be provided in separate, Bates-stamped files.

If this request is denied in whole or part, please justify all withholdings by reference to specific exemptions and statutes, as applicable. For each withholding, please also explain why your agency “reasonably foresees that disclosure would harm an interest protected by an exemption” or why “disclosure is prohibited by law[.]” 5 U.S.C. § 552(a)(8)(A)(i). We seek the release of all segregable portions of otherwise exempt material, *see* 5 U.S.C. § 552(b). We also reserve the right to appeal any decision in relation to this Request.

Thank you for your prompt attention to this Request. Please **send all records and correspondence by email** to Amrit Singh at [amrit.singh@opensocietyfoundations.org](mailto:amrit.singh@opensocietyfoundations.org).

Sincerely,



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